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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 84 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S H RAJPUT

Versus

JITENDRA JAYANTILAL SHAH

Appearance:

Mr.Pranav Desai for appellant

MRS QUEROBINA YAGNIK for Respondent No. 1

Mr.B.D. Desai, APP for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 08/12/2000

ORAL JUDGEMENT

1. Appellant, who is Food Inspector of Vadodara Municipal Corporation, by filing this appeal, has challenged the judgment and order dated December 2, 1987,

rendered by the learned Sessions Judge, Vadodara, in Criminal Appeal No.16 of 1996, by which judgment, the learned Sessions Judge quashed and set aside the order of conviction of the respondent (original accused No.4) under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 ('Act' for short), in Criminal Case No.5523 of 1984 passed by learned Judicial Magistrate, First Class (Municipal), Vadodara.

2. The appellant-Food Inspector visited the shop of the respondent, namely, Laxmi Grain Shop, situated at Salatwada area, Vadodara, on March 21, 1984 around 12 noon and collected samples of three bottles of fruit chutney by paying Rs.18/-. Three bottles of chutney were seized under a panchanama. One bottle of chutney was sent to the public analyst for analysis to find out the ingredients of the said sample by following the usual procedure under the Act and the Prevention of Food Adulteration Rules, 1955 ('Rules' for short). On receipt of the report of the public analyst, it was found that the contents of the sample bottle, namely, fruit chutney, did not conform to the standard prescribed under the Act. After obtaining the sanction of the competent authority under Section 20 of the Act, the appellant filed a complaint in the Court of learned Judicial Magistrate, First Class (Municipal), Vadodara, against the respondent and three partners of the shop. The said complaint was registered as Criminal Case No.5523 of 1984. On the plea of warranty being raised by accused Nos. 1 to 4, original accused Nos. 5 and 6 were also impleaded as accused in the complaint. The record indicates that the original accused No.5, who was the proprietor of Shakti Sales Agency, submitted an application before the learned Magistrate to forward the sample of chutney to the Central Food Laboratory for analysis. Accordingly, the sample was forwarded to the Central Food Laboratory for analysis. The report of the Central Food Laboratory also indicated that the sample of chutney did not conform to the standard prescribed under the Act and the Rules.

3. Before the learned Magistrate, the appellant was examined at Exh.27. After recording of evidence of the appellant, charge Exh.66 was framed against respondent, Jitendra Jayantilal Shah, and five other persons for the offences punishable under Section 7 read with Section 16 of the Act. All the accused persons pleaded not guilty and claimed to be tried.

4. Panch witness, Jagdish Ramanlal Sutar, who was panch present at the time of drawing of sample, was examined at Exh.79. After the prosecution case was over,

the learned Magistrate recorded further statements of the accused persons under Section 313 of the Code of Criminal Procedure. The learned Magistrate, after appreciating oral as well as documentary evidence, convicted the respondent herein (original accused No.4) for the offences under Sections 7 and 16 of the Act and sentenced him to undergo simple imprisonment of six months and to pay fine of Rs.1000 in default simple imprisonment of one month. Other accused persons, namely, accused Nos.1, 2, 3, 5 and 6 were acquitted from the charges framed against them.

5. The respondent-original accused No.4 filed Criminal Appeal No.16 of 1986 in the Sessions Court at Vadodara, challenging the judgment and order of conviction dated January 31, 1986, recorded by the learned Judicial Magistrate, First Class (Municipal), Vadodara, in Criminal case No.5523 of 1984.

6. Before the learned Sessions Judge, various contentions were raised by the appellant and the respondent. One of the contentions raised was that the sanction to prosecute granted by the Public Health Authority under Section 20 of the Act was not a valid sanction. The learned Sessions Judge held that there was no valid consent obtained under Section 20 of the Act. In my view, the point about the consent being invalid, is concluded by the decision of the Supreme Court in the case of Suresh H. Rajput and others vs. Bhartiben Pravinbhai Soni and others, (1996) 7 Supreme Court Cases 199. It has been held by the Apex Court in the above decision that "the report of analyst and other relevant materials were placed before the sanctioning authority and the sanctioning authority after having gone through the material had granted sanction; it cannot be held that there was no valid sanction because at the stage of according sanction, the authority was not required to weigh the pros and cons and then to find whether the case could end in conviction or acquittal." In view of the judgment of the Apex Court in the case of Suresh H. Rajput (supra), the finding of the learned Sessions Judge that there was no valid sanction deserves to be quashed and set aside.

7. The learned Sessions Judge found that there was non-compliance of provision of Section 313 of the Code of Criminal Procedure, as the respondent, original accused No.4, was not specifically questioned about the report of the Central Food Laboratory and the contents of the adulterated substances. According to the learned Sessions Judge, while recording examination of the

respondent under Section 313 of the Code of Criminal Procedure, the circumstances appearing against him were not pointed out to him and no specific question was put with regard to contents of the report of the Central Food Laboratory. The learned Sessions Judge, following decision of the Punjab & Haryana High Court, in the case of Jang Bahadur vs. State U.T. Chandigarh, PFA Cases 1983 (II) page 313, held that serious prejudice was caused to the respondent when specific questions were not put before him with regard to contents of the report of the Central Food Laboratory, and, therefore, the respondent was liable to be acquitted. On the basis of the aforesaid finding, the learned Sessions Judge allowed the appeal by setting aside the conviction and sentenced imposed on the respondent, which has given rise to filing of the present appeal by the original complainant.

8. Learned counsel, Mr. Pranav G. Desai, and learned counsel for the respondent have taken me through the entire record and proceedings of the case.

9. It has been submitted by the learned counsel for the appellant that the respondent was in the know of the report of the Central Food Laboratory and by not asking specific question in his further statement, no prejudice was caused to him and, therefore, the learned Sessions Judge has erred in acquitting the respondent. On the other hand, it is submitted by learned counsel for the respondent that, in charge Exh.66, the contents of the report of the Central Food Laboratory were not mentioned and in the further statement of the respondent, no specific question was put to him with regard to contents of the report of the Central Food Laboratory and, therefore, the respondent, original accused No.4, had no opportunity to explain abut the contents of the report of the Central Food Laboratory which has caused serious prejudice to the respondent and, therefore, the order of acquittal may be confirmed and the appeal may be dismissed.

10. The submission of the learned counsel for the respondent that serious prejudice was caused to the respondent when no specific question was put to him in his further statement with regard to contents of report of the Central Food Laboratory and there was no mention in the charge Exh.66 about the contents of the report of the Central Food Laboratory and, therefore, the conviction recorded by the learned Magistrate was required to be quashed and set aside, deserves to be accepted. It is true that, in the charge Exh.66, the contents of the report of the Central Food Laboratory

were not mentioned. As per the report of the Central Food Laboratory, the contents found in the sample are as follows:

Total ash : 2.99 per cent
Acidity : 0.83 per cent
Total Soluble Solids : 47.5 per cent
Colour : Coal tar food colour
cormoisine present
Mold-funds : Not detected

It was incumbent on the learned Magistrate to mention the contents found in the sample as mentioned in the report of the Central Food Laboratory, in the charge Exh.66. Even, at the time of recording of further statement of the respondent under Section 313 of the Code of Criminal Procedure, no specific question was put to him with regard to contents of the food sample as noted in the report of the Central Food Laboratory. In my view, this has caused serious prejudice to the respondent. The further statement recorded of the respondent Exh.17 shows that the learned Magistrate had not put any question with regard to report of the Central Food Laboratory to the respondent and he was not afforded any opportunity to explain with regard to the contents thereof. The respondent was charged for having violated the provisions of the Act on the basis of the report of the Central Food Laboratory. It is from the aforesaid nature of the examination of the accused No.4 under Section 313 of the Code of Criminal Procedure that reference has been made to a decision of the Apex Court in the case of Ajmer Singh vs. State of Punjab reported in AIR 1953 Supreme Court 76, where the Apex Court has observed that it is not sufficient compliance with the section to generally ask the accused that having heard the prosecution evidence what he has to say about it and that the accused must be questioned separately about each material circumstance which is intended to be used against him. The Apex Court has referred to Tara Singh vs.The State, 1951 SCR 729 pointing at the very object of the provision is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Again, in the case of Surendraprasad vs. State of Gujarat, reported in 1980 Cri.L.J. 1016, this Court had an occasion to make the following observations in para 43.:

"43. The Presiding Judges while examining the accused persons under Section 313 of the Cr.P.C. must be on caution to see that each and every circumstance appearing against the accused from the prosecution evidence must be

separately and distinctly put to the accused so as to enable the accused to explain the said circumstance. If the questions put to the accused are unusually longish and take in their sweep a number of circumstances appearing against the accused from the prosecution evidence, the possibility of the accused being misguided cannot be ruled out, though the same may not cause any serious prejudice or any prejudice to the accused. This statutorily prescribed obligation on the part of the learned Judges conducting the trials must be scrupulously discharged, otherwise, the accused may innocently give false answers to the questions put to him by the learned Presiding Judges or he may not be able to give any answer in the questions put by the Presiding Judge. This part of the trial is of utmost importance, and, as a result of any inadvertence or on account of undue haste on the part of the learned Judges in the zeal of completing the trial soon, if the examination of the accused under Section 313 of the Code of Criminal Procedure is not properly done in its true and fair spirit, the possibility of the trial court doing injustice cannot be ruled out.

11. The learned counsel for the appellant, at this stage, submitted that the matter may be remanded to the trial court for recording statement of accused under Section 313 of the Code, and the trial court may be directed to decide the matter afresh after considering such statement. The learned counsel for the appellant has relied upon the judgment of the Apex Court in the case of Ganeshmal Jashraj vs. Government of Gujarat reported in AIR 1980 Supreme Court 264. In the case of Ganeshmal Jashraj (supra), the accused was charged before the learned Magistrate for the offence punishable under Section 16(1)(a)(i) of the Act for selling adulterated turmeric powder. The prosecution closed its case and, thereafter, the appellant was examined by the learned Magistrate under Section 313 of the Code and on the same day as a result of plea bargaining the learned Magistrate proceeded to make order convicting the accused and sentencing him to suffer simple imprisonment till rising of the Court and also to pay fine of Rs.300/- in default to suffer further R.I. for one month. Through an anonymous application, this Court had come to know about such a course adopted by the learned Magistrate and, it, therefore, exercised suo-motu revisional jurisdiction and enhanced the sentence to three months simple imprisonment and fine of Rs.500/-. The matter was carried to the Apex Court who had an occasion to make following observations:

"There can be no doubt that when there is an admission of guilt made by the accused as a result of plea bargaining

or otherwise, the evaluation of the evidence by the Court is likely to become a little superficial and perfunctory and the Court may be disposed to refer to the evidence not critically with a view to assessing its credibility but mechanically as a matter of formality in support of the admission of guilt. The entire approach of the Court to the assessment of the evidence would be likely to be different when there is an admission of guilt by the accused. Here it is obvious that the approach of the learned Judicial Magistrate was affected by the admission of guilt made by the appellant and in the circumstances, it would not be right to sustain the conviction of the appellant."

In the result, the Apex Court allowed the appeal and set aside the order of enhancement of sentence rendered by this Court and the order passed by the Magistrate convicting the accused and remanded the case to the learned Judicial Magistrate so that he might proceed further from the stage of examination under Section 313 of the Code of Criminal Procedure and dispose of the case on the basis of the evidence led on behalf of the prosecution. Following parting observations would also need consideration while dealing with the request of the learned advocate for the appellant:-

"Before we part with this case, we must regretfully observe and this was not disputed by the learned counsel appearing on behalf of the State, that most of the cases of food adulteration which come to the Courts are cases directed against small trademen such as grocers, milk-vendors, etc. It is common knowledge that these small tradesmen purchase the food stuff sold by them from the wholesalers and some times even directly from the manufacturers and more often than not the adulteration is made either by the wholesalers or by the manufacturers. Ordinarily it is not the small retailers who adulterate the articles of food sold by them. Yet it is only the small retailers who are caught by the food inspectors and the investigative machinery of the food department does not for some curious and inexplicable reason turn its attention to the wholesalers and manufacturers. The small tradesmen who eke out a precarious existence living almost from hand to mouth are sent to jail for selling food stuff which is often enough not adulterated by them and the wholesalers and manufacturers who really adulterate the food stuff and fatten themselves on the misery of others escape the arm of the law. The Food Inspection Department prides itself on its statistics by catching small tradesmen and by its gross indifference and inaction, allows wholesalers and manufacturers to

carry on their nefarious activities, untouched and unaffected by the penal law. The result is that a wrong impression is being created on the public mind that the law is being properly enforced whereas in fact what is really happening is that it is only the small tradesmen who are quite often not themselves responsible for adulteration who are caught and sent to jail while there is no effective enforcement of the law against the real adulterators. This is a failing which we notice in the implementation of many of our laws. It is only the smaller flies which get caught in the web of these laws while the bigger ones escape. This syndorma of soft justice to big economic criminals and harsh justice to the humbler offenders is a systemic weakness which affects the credibility of the rule of law itself. It is no wonder that an anonymous poet, sardonically said while projecting the social dimension of this systemic deficiency:

The law looks up both
man and woman,
Who steals the goose
from off the common,
But lets the greater
felon loose,
Who steals the common
from the goose."

While dealing with the request of the learned advocate for the appellant, it could be noticed that the respondent is not charged with such adulteration as could be said to be unfit for human consumption. That apart, the learned advocate for the respondent made reference to a decision of the Apex Court in the case of State of Maharashtra vs. Gopalprasad Govindprasad Agrawal and others reported in 1998 (9) SCC 274 for submitting that no fruitful purpose will be served by remanding matter after passage of 16 years particularly when alleged adulteration is only pertaining to some prescribed standards and not one as would adversely affect human health. In the present, the offence charges against the respondent is relatable to a transaction in the year 1984. More than 16 years have passed. In view of the nature of adulteration reflected by the report of the public analyst, it would be futile to remand the matter to the trial court. Following observations made in a case under the relevant provisions of the Act by the Apex Court in Gopalprasad's case (supra) would accordingly assume importance:-

"Ordinarily, after recording the above findings we are required to set aside the impugned acquittal and remand

the matter for disposal of the appeals on their merits but having regard to the fact that since the offences were allegedly committed almost 20 years have elapsed we do not feel inclined to take such a course of action. We, therefore, dismiss the appeals with the above observations."

12. In the result, although at the ultimate conclusion of the trial, after recording of the statement of the respondent under Section 313 of the Code of Criminal Procedure the prosecution might get through if the matter is remanded, bearing in mind the passage of time and the nature of adulteration as flowing from the report of the public analyst and also bearing in mind the fact that the respondent happened to be a small retailer in grocery and miscellaneous goods, it would not be just and proper to remand the matter to the trial court. This appeal is, accordingly, dismissed.

December 8, 2000 (M.H.Kadri, J.)

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